

Office of the Secretary, HUD

§ 17.89

Reserve of the Armed Forces of the United States.

Pay means basic pay, special pay, income pay, retired pay, retainer pay, or, in the case of an employee not entitled to basic pay, other authorized pay.

Salary offset means a deduction from the pay of an employee without his or her consent to satisfy a debt. Salary offset is one type of administrative offset that may be used by the Department in the collection of claims.

Waiver means the cancellation, remission, forgiveness, or nonrecovery of a debt allegedly owed by an employee of an agency as permitted or required by 5 U.S.C. 5584, 10 U.S.C. 2774, 32 U.S.C. 716, or 5 U.S.C. 8346(b), or any other law.

§ 17.85 Coordinating offset with another Federal agency.

(a) *When HUD is owed the debt.* When the Department is owed a debt by an employee of another agency, the other agency shall not initiate the requested offset until the Department provides the agency with a written certification that the debtor owes the Department a debt (including the amount and basis of the debt and the due date of the payment) and that the Department has complied with these regulations.

(b) *When another agency is owed the debt.* The Department may use salary offset against one of its employees who is indebted to another agency if requested to do so by that agency. Such a request must be accompanied by a certification by the requesting agency that the person owes the debt (including the amount) and that the employee has been given the procedural rights required by 5 U.S.C. 5514 and 5 CFR part 550, subpart K.

§ 17.87 Determination of indebtedness.

In determining that an employee is indebted to HUD, the Secretary will review the debt to make sure that it is valid and past due.

§ 17.89 Notice requirements before offset.

Except as provided in § 17.83(d), deductions will not be made unless the Secretary first provides the employee with a minimum of 30 calendar days written notice. This Notice of Intent to

Offset Salary (Notice of Intent) will state:

(a) That the Secretary has reviewed the records relating to the claim and has determined that a debt is owed, the amount of the debt, and the facts giving rise to the debt;

(b) The Secretary's intention to collect the debt by means of deduction from the employee's current disposable pay account until the debt and all accumulated interest are paid in full;

(c) The amount, frequency, approximate beginning date, and duration of the intended deductions;

(d) An explanation of the Department's requirements concerning interest, penalties, and administrative costs, including a statement that such assessments must be made unless excused in accordance with the Federal Claims Collection Standards as provided in 31 CFR 901.9 (although this information may alternatively be provided in the demand notice pursuant to 24 CFR 17.65);

(e) The employee's right to inspect and copy Department records relating to the debt or, if the employee or his or her representative cannot personally inspect the records, to request and receive a copy of such records;

(f) The employee's right to enter into a written agreement with the Secretary for a repayment schedule differing from that proposed by the Secretary, so long as the terms of the repayment schedule proposed by the employee are agreeable to the Secretary;

(g) The right to a hearing, conducted in accordance with subpart A of part 26 of this chapter by an administrative law judge of the Department or a hearing official of another agency, on the Secretary's determination of the debt, the amount of the debt, or percentage of disposable pay to be deducted each pay period, so long as a petition is filed by the employee as prescribed by the Secretary;

(h) That the timely filing of a petition for hearing will stay the collection proceedings (See § 17.91);

(i) That a final decision on the hearing will be issued at the earliest practical date, but not later than 60 calendar days after the filing of the petition requesting the hearing, unless the

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employee requests and the hearing officer grants a delay in the proceedings;

(j) That any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(1) Disciplinary procedures appropriate under 5 U.S.C. Ch. 75, 5 CFR part 752, or any other applicable statutes or regulations;

(2) Penalties under the False Claims Act, 31 U.S.C. 3729-3731, or any other applicable statutory authority; or

(3) Criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002 or any other applicable statutory authority.

(k) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made;

(l) Unless there are applicable contractual or statutory provisions to the contrary, that amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee; and

(m) The method and time period for requesting a hearing, including the address of the Office of Appeals to which the request must be sent.

§ 17.91 Request for a hearing.

(a) Except as provided in paragraph (d) of this section, an employee must file a petition for a hearing that is received by the Office of Appeals not later than 20 calendar days from the date of the Department's notice described in § 17.89 if an employee wants a hearing concerning—

(1) The existence or amount of the debt; or

(2) The Secretary's proposed offset schedule.

(b) The petition must be signed by the employee, must include a copy of HUD's Notice of Intent to Offset Salary, and should admit or deny the existence of or the amount of the debt, or any part of the debt, briefly setting forth any basis for a denial. If the employee objects to the percentage of disposable pay to be deducted from each check, the petition should state the objection and the reasons for it. The petition should identify and explain with reasonable specificity and brevity the facts, evidence, and witnesses that the

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employee believes support his or her position.

(c) Upon receipt of the petition, the Office of Appeals will send the employee a copy of the Salary Offset Hearing Procedures Manual of the Department of Housing and Urban Development.

(d) If the employee files a petition for hearing later than the 20 calendar days as described in paragraph (a) of this section, the hearing officer may accept the request if the employee can show that the delay was because of circumstances beyond his or her control or because of failure to receive notice of the filing deadline (unless the employee has actual notice of the filing deadline).

§ 17.93 Result if employee fails to meet deadlines.

An employee waives the right to a hearing, and will have his or her disposable pay offset in accordance with the Secretary's offset schedule, if the employee:

(a) Fails to file a petition for a hearing as prescribed in § 17.91; or

(b) Is scheduled to appear and fails to appear at the hearing.

§ 17.95 Written decision following a hearing.

Written decisions provided after a request for a hearing will include:

(a) A statement of the facts presented to support the nature and origin of the alleged debt;

(b) The hearing officer's analysis, findings, and conclusions, in light of the hearing, concerning the employee's or the Department's grounds;

(c) The amount and validity of the alleged debt; and

(d) The repayment schedule, if applicable.

§ 17.97 Review of departmental records related to the debt.

(a) *Notification by employee.* An employee who intends to inspect or copy departmental records related to the debt must send a letter to the Secretary stating his or her intention. The letter must be received by the Secretary within 20 calendar days of the date of the Notice of Intent.